

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.836 OF 2009

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., assailing the order, dated 26.03.2009 in M.C.No.112 of 2008 on the file of the Judge, Family Court, Guntur.

2. For the sake of convenience, the parties hereinafter will be referred to as they were arrayed before the trial Court in M.C.No.112 of 2008.

3. Learned counsel for the respondent-petitioner herein strenuously submitted that the trial Court without taking into consideration the earning capacity of the respondent, granted maintenance at the rate of Rs.1200/- per month to the 1st petitioner and Rs.800/- per month to the 2nd petitioner on erroneous grounds.

4. Per contra, learned counsel for the petitioners 1 and 2-respondents 2 and 3 herein submitted that the petitioners have filed the above M.C. under Section 125 Cr.P.C., seeking maintenance at the rate of Rs.3,000/- per month to each of the petitioners 1 and 2 and the trial Court granted maintenance after taking into consideration the financial status of both parties. He further submitted that there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.

5. The facts of the case are as follows: The marriage of the 1st petitioner was performed with the respondent on 10.04.2006 as per Muslim Rites and caste customs. Immediately after the marriage, the 1st petitioner joined the

respondent to lead happy marital life. Out of lawful wedlock, the 1st petitioner and the respondent were blessed with a daughter i.e., 2nd petitioner on 12.09.2007. For one reason or the other, due to bad weather prevailed in the family life of the 1st petitioner and the respondent, the petitioners were forced to file the M.C. claiming maintenance at the rate of Rs.3,000/- per month to each of the petitioners 1 and 2. The respondent has been running a cool drink shop in Guntur Town and getting income of Rs.10,000/- per month. He has own building worth Rs.15,00,000/- and is getting monthly rent of Rs.5,000/-. Hence, the petitioners filed the above M.C. seeking maintenance.

6. The respondent filed counter admitting that the 1st petitioner is his wife and 2nd petitioner is his daughter, *inter alia*, contending that 1st petitioner herself left the matrimonial home without any reason and foisted false case against him. It is his further case that the petitioner was frequently visiting her parents' house without informing him and he used to go to her in-laws house and bring her back. Though the elders advised to change her attitude, she did not heed their advice.

7. To substantiate the case, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 and A2 were marked. On behalf of the respondent, R.Ws. 1 and 2 were examined and Ex.B1 was marked.

8. The trial Court after considering both oral and documentary evidence available on record, partly allowed the petition granting maintenance at the rate of Rs.1200/- per month to the 1st petitioner and Rs.800/- per month to the 2nd petitioner. Aggrieved by the quantum of maintenance granted by the trial Court, the respondent preferred this revision.

9. The points that arise for consideration, in this revision, are:

- 1) Whether the quantum of maintenance granted by the trial Court is on higher side? and
- 2) Whether there is any illegality, irregularity or impropriety in the order of the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.?

10. Since both the points are inter-linked with each other, this Court is inclined to answer both the points simultaneously, in order to avoid re-capitulation of facts.

11. A perusal of the record reveals that the respondent has been running a cool drink shop in Guntur Town. The trial Court arrived at a conclusion that the respondent is getting Rs.4,000/- per month by running the cool drink shop. Absolutely, there is no material on record to establish that the 1st petitioner is having movable or immovable properties or any other source of income to maintain herself and her daughter. There is a social and moral obligation on the part of the respondent to provide reasonable amount towards maintenance of the petitioners. The petitioners and the respondent are residents of Guntur Town. Though the petitioners have taken a plea that the respondent is having vacant site, no document is produced to substantiate the same. Basing on the material available on record, the trial Court arrived at a conclusion that the respondent has been running cool drink shop in Guntur Town. It is a matter of common knowledge that one may get Rs.4,000/- to Rs.5,000/- per month by running a cool drink shop in Guntur town. The trial Court after taking into consideration the financial status of both parties, granted maintenance as stated supra. An amount of Rs.2,000/- is hardly sufficient for sustenance of two individuals in Guntur town.

12. It is a settled principle of law that this Court can set aside the order passed by the trial Court, if there is any illegality or irregularity in the said order. The findings recorded by the trial Court are basing on the oral and documentary evidence available on record. I am fully endorsing with the findings recorded by the trial Court with regard to earning capacity of the respondent. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that granting maintenance at the rate of Rs.1200/- per month to the 1st petitioner and Rs.800/- per month to the 2nd petitioner is on higher side. There is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C. Therefore, the revision lacks merits and bona fides and is liable to be dismissed.

13. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

DATED: 31-08-2017.
Hsd

T.SUNIL CHOWDARY, J